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7 ATTORNEYS FOR AMERICA'S SERVICING COMPANY

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DONNIE KNAULS,

11 Plaintiff,

12 v.

13 WMC MORTGAGE,
14 ASC/AMERICA'S SERVICING
15 COMPANY MORTGAGE LENDERS
16 NETWORK USA INC,
17 COUNTRYWIDE HOME LOANS,

18 Defendants.

Case No. 07CV2233-DMS (NLS)

DEFENDANT WELLS FARGO BANK
NA dba AMERICA'S SERVICING
COMPANY'S REPLY RE NON
OPPOSITION TO MOTION TO
DISMISS FIRST AMENDED
COMPLAINT PURSUANT TO FRCP
12(b)(6) OR IN THE ALTERNATIVE
MOTION FOR DEFINITE STATEMENT

Judge: Hon. Dana M. Sabraw

Date: May 23, 2008

Time: 1:30 p.m.

Room: 10

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24 Defendant, AMERICA'S SERVICING COMPANY ("ASC") hereby submits the
25 following Reply Brief in Support of It's Motion to Dismiss First Amended Complaint
26 Pursuant to FRCP 12(b)(6) or in the Alternative Motion for Definite Statement.

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I. TO DATE, NO OPPOSITION BRIEF HAS BEEN FILED TO ASC'
MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO
FRCP 12(b)(6) OR IN THE ALTERNATIVE MOTION FOR DEFINITE
STATEMENT

ASC's Motion to Dismiss First Amended Complaint Pursuant to FRCP 12(b)(6) or in the Alternative Motion for Definite Statement ("Motion") was timely served on April 8, 2008. Based on the hearing date of May 23, 2008, Plaintiff's opposition brief was to be served on ASC's counsel no later than May 9, 2008. To date, this office has not received any opposition brief from Mr. Knauls to the Motion.

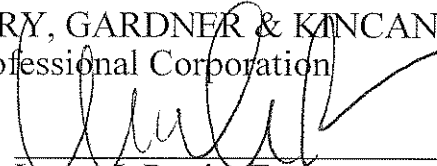
If Mr. Knauls files an opposition brief to ASC's Motion prior to the hearing date, it would be untimely, and would not allow sufficient time for ASC to properly prepare for the hearing or to draft a reply brief. Therefore, if an opposition brief is filed with the Court, it should not be considered by the Court in determining ASC's Motion because it was untimely filed and/or not served on ASC.

As such, ASC's Motion to Dismiss First Amended Complaint Pursuant to FRCP 12(b)(6) or in the Alternative Motion for Definite Statement should be granted in its entirety.

BARRY, GARDNER & KINCANNON
A Professional Corporation

Dated: May 16, 2008

By:



Laura J. Petrie, Esq.
Attorneys for Defendant,
WELLS FARGO BANK NA dba
AMERICA'S SERVICING COMPANY

H:\3651\0021\Pleading\non opp reply re motion to dismiss fac.wpd

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5000 Birch Street, Suite 420, Newport Beach, California, 92660.

On May 16, 2008, I served the foregoing document described as **DEFENDANT WELLS FARGO BANK NA dba AMERICA'S SERVICING COMPANY'S REPLY RE NON OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FRCP 12(b)(6) OR IN THE ALTERNATIVE MOTION FOR DEFINITE STATEMENT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Donnie Knauls
2360 Cypress Avenue
Lemon Grove, CA 91945

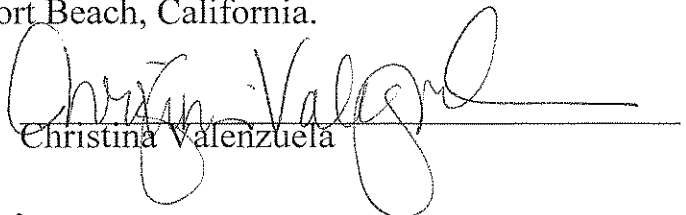
Attorney for Defendant Countrywide
Home Loans, Inc.
Sanford Shatz, Esq.
5220 Las Virgenes Road, MS: AC-11
Calabasas, CA 91302

Attorneys for Defendant
WMC Mortgage Corp.
Francis J. Cunningham III, Esq.
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Woodland Hills, CA 91367-3640

[X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Newport Beach, California. I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2008, at Newport Beach, California.


Christina Valenzuela